

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA : CR-11-30
5 -against- : U.S. Courthouse
6 SCOTT FAPPIANO, ET AL, : Brooklyn, New York
7 DEFENDANTS, : February 17, 2011
8 ----- X 2:30 o'clock p.m.

9 TRANSCRIPT OF STATUS CONFERENCE
10 BEFORE THE HONORABLE SANDRA L. TOWNES
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Government: LORETTA LYNCH
14 United States Attorney
15 147 Pierrepont Street
16 Brooklyn, New York 11201
17 BY: ELIZABETH GEDDES
18 PAUL LIFSCHITZ
19 Assistant U.S. Attorney

20 For the Defendant: HARLAN PROTASS, ESQ
21 For Deft Fappiano

22 JOSEPH KILADA, ESQ.
23 For Deft DeStefano

24 EPHRAIM SAVITT, ESQ.
25 For Deft Favuzzo

26 JEREMY ORDEN, ESQ.
27 For Deft Durso

28 ALEX EISEMANN, ESQ.
29 For Deft Russo

30 CHARLES HOCHBAUM, ESQ.
31 For Deft Castellano

1 NORMAN TRABULUS, ESQ.
2 For Deft Savarese

3 MICHAEL SPORT, ESQ.
4 For Deft Castellazzo

5 MICHAEL HURWITZ, ESQ.
6 For Deft Rossano

7 SAM TALKIN, ESQ.
8 For Deft Califano

9 MARTIN ADELMAN, ESQ.
10 For Deft Fusco

11 MARTIN GEDULDIG, ESQ.
12 For Deft Di Marco

13 JOHN DEVANEY, ESQ.
14 For Deft Russo

15 GEORGE GALGANO, ESQ.
16 For Deft Russo

17 VINCENT ROMANO, ESQ.
18 For Deft Sessa

19 ROBERT LEIGHTON, ESQ.
20 For Deft Delucia

21 PAUL MADDEN, ESQ.
22 For Deft Scopo

23 Court Reporter: SHELDON SILVERMAN
24 Official Court Reporter
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1 THE CLERK: United States versus Fappiano for oral
2 argument.

3 (Appearances noted.)

4 THE COURT: In a motion brought by Mr. Fappiano,
5 joined by 36 other defendants in this 39-defendant case,
6 United States versus Russo, et al, 11-CR-30, have moved to
7 have this case randomly assigned instead of assigned to this
8 court as related to United States versus Bombino at 10-CR-147.
9 I have received the submissions and I've read them.

10 Is there anything that you would like to add,
11 Mr. Protass?

12 MR. PROTASS: No, your Honor, other than responding
13 to anything the government might say here today.

14 THE COURT: Anything from the government?

15 MR. LIFSCHITZ: Not at this time, thank you.

16 THE COURT: As to the letter of the local rules, the
17 government's analysis is correct. The cases are related
18 because Theodore Persico, Junior is a defendant in each case.
19 The relation is in compliance with Chief Judge Dearie's
20 administrative order issued February 27th, 2008 which requires
21 that all cases be randomly assigned unless the "United States
22 Attorney certifies in writing at the time of filing the
23 indictment that the case to be assigned satisfies one of the
24 three conditions in Rule 50.3(c) or involves the same specific
25 conduct that is the subject of a pending charge."

1 The final decision, however, regarding relation of
2 cases is in the discretion of the court. See Local
3 Rule 50.3(f). Local Rule 50.3(a) provides that a case shall
4 be deemed to be related when due to factual and legal
5 similarities "a substantial saving of judicial resources is
6 likely to result from assigning both cases to the same judge."

7 Upon review of United States versus Bombino, et al,
8 10-CR-147, which was randomly assigned to this court and
9 United States versus Russo, et al, 11-C-R-30, United States
10 versus Messina, et al, 11-CR-31 and United States versus
11 Balzano, et al, 11-CR-32, I am unable to conclude that
12 relation of the latter three cases to United States versus
13 Bombino, et al would result in a substantial saving of
14 judicial resources as a result of the relation.

15 The fact that Theodore Persico, Junior is a
16 defendant in both Bombino and Russo is not a sufficient fact
17 to ensure the goals of local 50.3(a) will be met as a result
18 of this court accepting this case as related to United States
19 versus Bombino.

20 Accordingly, I decline the relation and direct the
21 Clerk of Court to randomly assign United States versus Russo
22 and its related cases; United States versus Messina, et al and
23 United States versus Balzano, et al, without prejudice to any
24 application on the issue of relation of these three cases to
25 the randomly assigned judge.

1 I have received an application, in fact, from
2 Mr. Messina seeking to remove the relationship finding with
3 regards to him and the other cases, Russo and Balzano. I am
4 not going to rule on that because the judge who is randomly
5 assigned should do so. If I am randomly assigned, it will
6 come back to me and then I will consider United States versus
7 Messina.

8 So ordered.
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